

**THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:) Chapter 7
)
Benjamin Jankowski)
and Marline Theodule-Jankowski,) Case No.: 19-34932
)
Debtors.)
) Hon. Deborah L. Thorne

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **April 1, 2021** at **9:00 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before the Honorable Deborah L. Thorne, and shall then present the attached **Trustee's Application to Employ Counsel**, a copy of which is attached hereto and hereby served upon you.

This motion will be presented and heard electronically using Zoom for Government. No personal appearance in court is necessary or permitted. To appear and be heard on the motion, you must do the following: To appear by video, use this link: <https://www.zoomgov.com>. Then enter the meeting ID. To appear by telephone, call Zoom for Government at 1-669-254-5252 or 1-646-828-7666. Then enter the meeting ID. Meeting ID and password. The meeting ID for this hearing is 160 9362 1728 – no password required. The meeting ID and further information can also be found on Judge Thorne's web page on the court's web site.

If you object to this motion and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days before that date. If a Notice of Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the motion in advance without a hearing.

Dated: March 23, 2021

Respectfully submitted,

MICHAEL DESMOND, not individually but
as Chapter 7 Trustee of the bankruptcy estate
of Benjamin Jankowski and Marline
Theodule-Jankowski

By: /s/ Justin M. Herzog
One of his Attorneys

Michael K. Desmond (#6208809)
Justin M. Herzog (#6324047)
FIGLIULO & SILVERMAN, P.C.
10 S. LaSalle Street, Suite 3600
Chicago, Illinois 60603
Tel: (312) 251-4600
Fax: (312) 251-4610

CERTIFICATE OF SERVICE

I, Justin M. Herzog, an attorney, hereby certify that on March 23, 2021 a true and correct copy of the foregoing **Trustee's Application to Employ Counsel** was filed electronically. Notice of the filing will be sent to all parties who are currently on the Court's Electronic Mail Notice List by operation of the Court's Electronic Filing System. In addition, copies will be served upon the parties on the attached service list via first-class United States mail, postage prepaid.

/s/ Justin M. Herzog

Mailing Information for Case 19-34932

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

- **Michael K Desmond** mkd.trustee@fslegal.com, IL23@ecfcbis.com
- **Patrick S Layng** USTPRegion11.ES.ECF@usdoj.gov
- **Peter L Berk** plberk@orb-legal.com

Manual Notice List

Benjamin Jankowski and Marline Theodule-Jankowski
11307 S Avenue G, Apt. 1B
Chicago, IL 60617
(*Debtors*)

Lawrence Amato
GWC Injury Lawyers
Via email: lamato@gwclaw.com

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In re:) Chapter 7
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**TRUSTEE'S APPLICATION FOR AUTHORITY
TO EMPLOY COUNSEL**

Michael K. Desmond, not individually but solely in his capacity as Chapter 7 Trustee (Trustee") of the bankruptcy estate of Benjamin Jankowski and Marline Theodule-Jankowski ("the Debtor"), moves this Court pursuant to 11 U.S.C. §§ 327 and 328 and Fed. R. Bankr. P. 2014 and 2016, for authority to employ Michael K. Desmond and the partners, associates, and paralegals of the law firm Figliulo & Silverman P.C. (collectively, "F&S"), retroactive to December 11, 2019, to perform legal services in connection with this Chapter 7 proceeding (the "Application"). In support of this Application, the Trustee respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction to consider the Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. § 1408.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
3. The statutory predicates for the relief requested in this Application are Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016(b).

BACKGROUND

4. On December 11, 2019 (the "Petition Date"), the Debtors filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code (the "Bankruptcy Code") in the

U.S. Bankruptcy Court for the Northern District of Illinois, Eastern Division (the “Bankruptcy Court”), thereby commencing the above-entitled case and creating the Debtor’s estate (the “Estate”).

5. The Debtors’ bankruptcy schedules listed an exemption in a personal injury lawsuit (the “Lawsuit”).

6. The Lawsuit was filed on November 19, 2019 in the Circuit Court of Cook County, Illinois, Law Division captioned *Benjamin A. Janksowski v. Lynda Holiday Lawrence*, case no. 2019-L-012790. The Lawsuit arises out of personal injuries suffered by Mr. Jankowski on or about January 20, 2018 when he was injured in a car accident.

7. The Lawsuit alleges that Ms. Lawrence’s negligent acts were a direct and proximate result of Mr. Jankowski’s injuries.

8. Because the Debtor’s claim arose prior to the Petition Date, the Lawsuit and any proceeds therefrom are property of the Estate pursuant to Section 541(a) of the Bankruptcy Code to be administered by the Trustee for the benefit of creditors of the Estate. The Trustee is informed and believes that there may be proceeds from the Lawsuit sufficient to make a distribution to creditors in this case.

EMPLOYMENT OF COUNSEL

9. By this Application, the Trustee seeks this Court’s authority to retain F&S as his general bankruptcy counsel with regard to the administration of this Chapter 7 bankruptcy case retroactive to December 11, 2019. The Trustee submits that retroactive approval will not prejudice any parties-in-interest and will allow F&S to be compensated fairly for the services provided.

10. The Trustee seeks to retain F&S to render the following services in connection with this Chapter 7 case:

- a) Advising the Trustee with respect to his rights and duties in this Chapter 7 proceeding and in any associated adversary proceeding;
- b) Assisting with recovery of the proceeds of the personal injury suit, including drafting and review of related settlement agreements;
- c) Advising the Trustee on legal issues relating to the administration of the Debtor's assets;
- d) Evaluating, preparing and documenting transactions in connection with the sale or potential liquidation of the Debtor's assets;
- e) Filing such lawsuits as may be necessary to collect assets of the estate;
- f) Representing the Trustee in litigation matters arising from this chapter 7 proceeding;
- g) Evaluating claims filed against the estate, filing objections if necessary and negotiating resolution of disputes with respect to such claims;
- h) Performing such other legal services as may be required from time to time as may be necessary to protect the estate, including routine court appearances.

11. The Trustee may, as necessary, seek additional authority to employ special counsel, accountants, appraisers, auctioneers, property managers, or other professional persons to represent or assist the Trustee in carrying out the Trustee's duties and administering this case.

12. F&S has agreed to provide legal services to the Trustee according to the rates set forth below:

Michael K. Desmond	\$400 per hour
Justin M. Herzog	\$275 per hour

Associates	\$250-\$275 per hour
Paralegal	\$95 per hour

13. The hourly rates set forth above are F&S's standard and customary hourly rates for work of this nature. All legal services required by the Trustee will be billed by F&S in increments of 1/10th of an hour. F&S may also request reimbursement for expenses incurred in connection with its representation of the Trustee such as filing fees, expert witness fees, deposition costs, transcripts, travel costs, outside copying costs, and courier charges ("Expenses").

14. F&S understands that any and all compensation for legal services rendered on behalf of the Estate, and requests for reimbursement of Expenses, shall be subject to further Court approval, after notice and hearing on separate application made in accordance with the Bankruptcy Code and the Local Rules of this Court.

15. The Trustee believes the employment of F&S is in the best interest of the bankruptcy estate. The professionals at F&S are experienced attorneys and are well qualified to represent the Trustee and the Estate. Michael K. Desmond and the other partners and associates of F&S are duly authorized to practice law before this Court and have vast experience in commercial litigation, bankruptcy, real estate litigation and construction litigation.

16. Section 327(a) of the Bankruptcy Code states that the Trustee, "with the court's approval, may employ one or more attorneys or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor] in carrying out [its] duties under" the Bankruptcy Code. 11 U.S.C. § 327(a).

17. Neither Mr. Desmond nor any other attorneys with F&S represents or holds any interest adverse to the Debtor or to the Debtor's bankruptcy estate with respect to the matter on

which they are to be employed, and that the attorneys and members of F&S are disinterested persons, as that term is defined in Section 101(14) of the Bankruptcy Code.

18. Further, neither Mr. Desmond nor any other attorneys with F&S has any connections with the Debtor, his creditors or other parties in interest, their respective attorneys and accountants or the United States Trustee, or any person employed in the office of the United States Trustee.

19. Additionally, between 1992 and 1998 Mr. Desmond served as an attorney with the Office of the United States Trustee for the Northern District of Illinois, and Mr. Desmond currently serves as a member of the private panel of Chapter 7 Trustees in this District. See attached Verified Declaration of Michael K. Desmond in support of this Application (“Declaration”), a copy of which is attached hereto as **Exhibit A** and incorporated by reference.

20. Therefore, Mr. Desmond and F&S are qualified for employment as general counsel to the Trustee in connection with the matters on which they are being employed pursuant to Section 327(a) of the Bankruptcy Code.

21. As set forth in the attached Declaration, neither Mr. Desmond nor F&S have entered into any arrangement to share such compensation as may be awarded herein except as permitted under Section 504(b) of the Bankruptcy Code. No attorney at F&S is a relative of the bankruptcy judge approving F&S’s retention, as proscribed by Rule 5002(a) of the Bankruptcy Rules.

NOTICE

22. Seven days’ notice of this Application has been given to the Office of the United States Trustee, the Debtor, his counsel, and all other counsel of record in this case. In light of the nature of the relief requested, the Trustee submits that no further notice is required.

WHEREFORE, the Trustee respectfully requests that this Court enter an order pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016(b):

- A. Granting the relief requested in this Application;
- B. Authorizing the Trustee to employ Michael K. Desmond and the attorneys and staff of Figliulo & Silverman, P.C. as his counsel for the matters set forth in this application retroactive to December 11, 2019;
- C. Approving the compensation and reimbursement arrangements set forth in the Application; and
- D. Granting such other relief as the Court deems appropriate.

Date: March 23, 2021

Respectfully submitted,

MICHAEL DESMOND, not individually but as Chapter 7 Trustee of the bankruptcy estate of Benjamin Jankowski and Marline Theodule-Jankowski,

By: /s/ Justin M. Herzog
One of his attorneys

Michael K. Desmond (#6208809)
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